

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Telecommunications Carriers Eligible to)	
Receive Universal Service Support)	
)	
Blue Jay Wireless, LLC)	WC Docket No. 09-197
)	
Petition for Limited Designation as)	
An Eligible Telecommunications)	
Carrier in Alabama, Connecticut, Delaware,)	
the District of Columbia, Florida,)	
New Hampshire, New York, North Carolina,)	
Tennessee and Virginia)	
)	

**BLUE JAY WIRELESS, LLC
PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER IN ALABAMA, CONNECTICUT, DELAWARE,
THE DISTRICT OF COLUMBIA, FLORIDA, NEW HAMPSHIRE, NEW YORK,
NORTH CAROLINA, TENNESSEE AND VIRGINIA**

John J. Heitmann
Joshua T. Guyan
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8400

Counsel to Blue Jay Wireless, LLC

May 21, 2012

SUMMARY

Blue Jay seeks designation as an eligible telecommunications carrier (“ETC”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as Amended (the “Act”) and Federal Communications Commission (“FCC” or “Commission”) rules, for the limited purpose of providing wireless services supported by the Universal Service Fund’s Lifeline program. Section 214(e)(6) permits the Commission to grant ETC designation in those states where the state has affirmatively stated an ETC Petitioner is not subject to state jurisdiction. Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee and Virginia all have stated they lack jurisdiction over wireless service providers and, consequently, Commission review and approval of Blue Jay’s Petition is warranted.

As described in greater detail herein, Blue Jay satisfies all of the requirements for designation as an ETC and is committed to complying with all of the Commission’s rules and requirements for ETCs providing Lifeline services. Grant of ETC status will be in the public interest as Blue Jay’s provision of Lifeline-supported services will further the Commission’s goals of the Lifeline program by increasing the service options available to low-income consumers. Further, Blue Jay’s low cost prepaid wireless services will provide an important source of high quality mobile service. Low-income consumers will have a stable contact method where traditional landline service is unavailable or simply not the best option for the consumer. Additionally, the prepaid nature of Blue Jay’s services permit consumers to anticipate and control their communications costs. Blue Jay’s Lifeline service offering includes a generous number of “free” minutes that are an invaluable resource for cash-strapped consumers and features such as voicemail that are critical to those seeking employment. Designation of Blue

Jay as an ETC will provide consumers with a valuable alternative for obtaining telephone service and this competition should spur other service providers to improve their service offerings to low-income consumers.

Table of Contents

I.	ABOUT BLUE JAY.....	2
II.	THE PUBLIC UTILITY COMMISSIONS IN EACH OF THE FEDERAL JURISDICTION STATES HAVE AFFIRMATIVELY STATED THEY DO NOT REGULATE CMRS CARRIERS FOR PURPOSES OF GRANTING ETC DESIGNATIONS.....	4
III.	BLUE JAY MEETS THE COMMISSION’S REQUIREMENTS FOR ETC DESIGNATION	5
IV.	THE PUBLIC INTEREST WILL BENEFIT FROM GRANTING ETC STATUS TO BLUE JAY.....	13
V.	ANTI-DRUG ABUSE CERTIFICATION	15
VI.	CONCLUSION	15

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Telecommunications Carriers Eligible to)	
Receive Universal Service Support)	
)	
Blue Jay Wireless, LLC)	WC Docket No. 09-197
)	
Petition for Limited Designation as)	
An Eligible Telecommunications)	
Carrier in Alabama, Connecticut, Delaware,)	
the District of Columbia, Florida,)	
New Hampshire, New York, North Carolina,)	
Tennessee and Virginia)	
)	

**BLUE JAY WIRELESS, LLC
PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER IN ALABAMA, CONNECTICUT, DELAWARE,
THE DISTRICT OF COLUMBIA, FLORIDA, NEW HAMPSHIRE, NEW YORK,
NORTH CAROLINA, TENNESSEE AND VIRGINIA**

Blue Jay Wireless, LLC (“Blue Jay” or the “Company”), pursuant to Section 214(e) of the Communications Act of 1934, as Amended (the “Act”), 47 U.S.C. § 214(e) and Section 54.202 of the rules of the Federal Communications Commission (“Commission” or “FCC”), 47 C.F.R. §54.202, hereby requests limited designation as an eligible telecommunications carrier (“ETC”) in Alabama, Connecticut, Delaware, the District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee, and Virginia (hereinafter, “Federal Jurisdiction States”), for the sole purpose of receiving universal service

Lifeline support. Blue Jay does not request ETC status for the purpose of receiving support from any of the other Universal Service Funds (“USF”), nor does it seek support from the Link Up program.

The Federal Jurisdiction States all have affirmatively stated that they lack jurisdiction or will not assign ETC status to commercial mobile radio service (“CMRS”) providers. Accordingly, the Commission has jurisdiction, pursuant to Section 214(e)(6) to review and grant the Company’s request for designation as an ETC in the Federal Jurisdiction States. As discussed in more detail below, Blue Jay meets the requirements for designation as an ETC and is able and prepared to offer the Lifeline-supported services throughout the Federal Jurisdiction States. Granting Blue Jay ETC status will benefit the public interest by making the Company’s services available to a broad range of low-income consumers.

I. ABOUT BLUE JAY

Blue Jay is a mobile virtual network operator (“MVNO”) that will provide wireless mobile phone services to consumers across the United States.¹ Blue Jay will provide domestic and international voice and data services, primarily to low-income consumers. As a reseller of wireless services, Blue Jay will purchase wireless network infrastructure and wireless transmission facilities from Sprint and Verizon Wireless on a wholesale basis and resell these services to its customers.² Blue Jay will provide affordable prepaid mobile phone service,

¹ The Company hereby also reports its corporate and trade names, identifiers, and its holding company, operating companies and affiliates as: Link Distributors, LLC (affiliate), Cardinal Wireless Distributors, LLC (affiliate), Timber Creek Wireless Fund I, LLC (affiliate), Splash Media, LP (affiliate), Agency Matrix, LLC (affiliate), Drivers Insurance Group, LLC (affiliate), Cobalt Real estate Services, LLC (affiliate), P.C. Processing, Inc. (affiliate), Team Systems, LLC (affiliate), LeadStart, LLC (affiliate), CenCal Holdings, LLC (affiliate), Timber Creek Capital, LP (affiliate) and Timber Creek Ranch, LP (affiliate).

² Blue Jay will purchase the services of Sprint and Verizon Wireless through a Mobile Virtual Network Enabler (MVNE) intermediary – Natel Networks, LLC.

including calling and text messaging, along with user-friendly handsets and high quality customer service. Blue Jay's products and plans will be specially geared toward serving lower income communities, and its service models and pricing plans will reflect this mission. The Company will not require service contracts from its customers and it will always ensure competitive low pricing for its services and products. By providing affordable service, Blue Jay can reach out to those who are often ignored by traditional carriers.

Blue Jay will manage and market all aspects of the customer experience, including setting service pricing, handset selection, marketing materials, and live customer service. The Company's prepaid, budget-friendly pricing will give many low-income consumers the option of having basic mobile phone service without the burden of hidden costs, varying monthly charges, or contractual commitments. Customers will be able to customize their mobile phone service to suit their needs with Blue Jay's pay-as-you-go rechargeable mobile phone plans.

Blue Jay's customer base will likely be low-income consumers and the majority are unlikely to have phone service of any kind prior to enrollment. Blue Jay's customers will depend on and benefit greatly from Blue Jay's inexpensive and flexible pricing plans. Blue Jay will not impose credit checks nor will it require any deposits or contractual commitments. Most of Blue Jay's customers will likely turn to Blue Jay because they cannot afford the postpaid services provided by traditional wireless carriers. Blue Jay will affirmatively reach out to the low-income sector of the consumer base to offer attractive and affordable communications options. As such, Blue Jay will contribute to the expansion of mobile wireless services for low-income consumers and intends to seek ETC designation in states and territories so that it may continue to expand the service options for low-income consumers.

II. THE PUBLIC UTILITY COMMISSIONS IN EACH OF THE FEDERAL JURISDICTION STATES HAVE AFFIRMATIVELY STATED THEY DO NOT REGULATE CMRS CARRIERS FOR PURPOSES OF GRANTING ETC DESIGNATIONS

Section 214(e)(1) of the Act reserves to state public utility commissions the authority to designate ETC status to requesting entities.³ However, Section 214(e)(6) permits the FCC to designate a petitioner as an ETC in cases involving a “common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”⁴ The FCC has stated that before it will consider an ETC application, the entity seeking ETC status must demonstrate that it “is not subject to the jurisdiction of a state commission”⁵ and that the entity must provide an “affirmative statement” from the relevant state commission that the carrier is not subject to the state commission’s jurisdiction.⁶ As demonstrated in the documents attached as Exhibit A, the public utility commission in each of the Federal Jurisdiction States has affirmatively stated that it lacks jurisdiction to designate ETC status. Accordingly, FCC review and approval of the instant application is warranted.

Blue Jay is not currently designated as an ETC in any state, although it is currently preparing ETC petitions to be filed in several states. However, because the state public utility commissions in the Federal Jurisdiction States have specifically and affirmatively denied jurisdiction over CMRS providers for purposes of granting ETC status, Blue Jay is not subject to state commission jurisdiction in any of the states for which it seeks an ETC designation herein.

³ See 47 U.S.C. § 214(e)(1).

⁴ 47 U.S.C. § 214(e)(6).

⁵ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997).

⁶ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 15 FCC Rcd 12208, ¶ 7 (2000).

The Commission has jurisdiction to grant ETC status in these states pursuant to Section 214(e)(6) of the Act.

III. BLUE JAY MEETS THE COMMISSION'S REQUIREMENTS FOR ETC DESIGNATION

Section 54.202 of the Commission's rules outlines the requirements that must be met before a carrier can be designated as an ETC by the Commission. As discussed in further detail below, Blue Jay meets these requirements and ETC designation in the Federal Jurisdiction States is warranted.

a) *Blue Jay will be a common carrier.*⁷

The Commission has consistently held that providers of wireless services are to be treated as common carriers for regulatory purposes. In addition, Section 332(c)(1)(A) of the Act states that CMRS providers will be regulated as common carriers.⁸ Blue Jay will provide CMRS telecommunications services and, accordingly, will be a common carrier.

b) *Blue Jay will Provide the Lifeline-Eligible Services by Reselling the Services of Sprint and Verizon Wireless.*

Section 214(e)(1)(A) of the Act states that an ETC must provide services "using its own facilities or a combination of its own facilities and resale of another carrier's services."⁹ The Commission's recent order reforming the Lifeline program granted blanket forbearance from this requirement, subject to conditions, to all ETC petitioners seeking limited ETC designation to participate in the Lifeline program.¹⁰ The Commission conditioned blanket

⁷ 47 CFR § 54.201(b).

⁸ 47 U.S.C. § 332(c)(1)(A).

⁹ 47 U.S.C. § 214(e)(1)(A).

¹⁰ *See Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital*

forbearance on the petitioner's compliance with certain ETC obligations including: providing 911 and E911 service regardless of activation status and prepaid minutes available, providing E911-compliant handsets and replacing non-compliant handsets, at no charge to the consumer, for Lifeline customers upon the effective date of the *Lifeline Reform Order*.¹¹ In addition, petitioners are required to file, and have approved, a compliance plan which includes specific information about the petitioner's service offerings and outlines the measures the petitioner will take to implement the obligations established in the *Lifeline Reform Order* as well as other measures to prevent waste, fraud and abuse that the Commission may deem necessary.¹² Blue Jay commits to complying with these conditions. To this end, Blue Jay submitted for review, on May 11, 2012, a Compliance Plan that meets the requirements of the *Lifeline Reform Order*.¹³ Consequently, Blue Jay is not required to meet the "own facilities" requirement of Section 214(e)(1)(A).

*c) Blue Jay certifies it will comply with the service requirements applicable to the support the Company receives.*¹⁴

Blue Jay will provide all of the telecommunications services supported by the Lifeline program¹⁵ and will make the services available to all qualified consumers throughout the Federal Jurisdiction States. The Company's services will include voice telephony services that provide voice grade access to the public switched network or its functional equivalent. Further,

Literacy Training, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report And Order and Further Notice Of Proposed Rulemaking, FCC 12-11, ¶ 368 (Feb. 6, 2012) ("*Lifeline Reform Order*").

¹¹ See *Lifeline Reform Order*, ¶ 373.

¹² See *Lifeline Reform Order*, ¶ 368.

¹³ See Exhibit B.

¹⁴ 47 C.F.R. § 54.202(a)(1).

¹⁵ See 47 C.F.R. § 54.201(d)(1).

Blue Jay's service offerings will provide its customers with minutes of use for local service at no charge to the customer. The Company will offer a set number of minutes of local service free of charge to its subscribers. Blue Jay's proposes to offer two basic Lifeline packages throughout the Federal Jurisdiction States: 1) 125 anytime prepaid minutes per month, with rollover and with text messaging assessed at a rate of 1 minute per text message for sending and one minute per text message for receiving text messages, at no charge; or 2) 250 anytime prepaid minutes per month, without rollover and with text messaging assessed at a rate of 1 minute per text message for sending and one minute per text message for receiving text messages, at no charge.

All plans will include domestic long-distance at no extra per minute charge.

Directory assistance calls (411) will be free, however, they will count as airtime minutes of usage. Lifeline customers can purchase additional bundles of minutes for as low as \$0.05/minute depending on the minute package purchased. For example, customers can purchase a 200 minute package for \$10.00. Airtime "top-up" minutes will be available for purchase at the Company's retail locations and on its website. Additional information regarding the Company's plans, rates and services can be found on its website www.bluejaywireless.com.

In addition to free voice services, customers can select either a free wireless handset or purchase an upgraded phone, such as a smartphone. For those customers choosing to upgrade to a smartphone, data can be added to any phone plan starting at \$1.25 per megabyte – a price that can be reduced on a "per megabyte" basis when the customer purchases multiple megabytes of data. The Company will also allow low-income customers to add affordable data usage to their free voice/text minutes thereby supporting greater smartphone utilization, consistent with the Commission's goal of promoting broadband access to all Americans.

The Company also will provide access to emergency services provided by local government or public safety officials, including 911 and E911 where available and will comply with any Commission requirements regarding E911-compatible handsets. As discussed above, Blue Jay will comply with the Commission's forbearance grant conditions relating to the provision of 911 and E911 services and handsets. Calls to 911 emergency services are always free, regardless of service activation or availability of minutes.

Finally, the Company will not provide toll limitation service ("TLS"). Blue Jay, like most wireless carriers, does not differentiate domestic long distance usage from local usage and all usage is paid for in advance. Pursuant to the *Lifeline Reform Order*, subscribers to such services are not considered to have voluntarily elected to receive TLS.¹⁶

d) *Blue Jay has the ability to remain functional in emergency situations.*¹⁷

As discussed in more detail above, Blue Jay will utilize the Sprint and Verizon Wireless networks to provide Blue Jay's mobile services. The Company has access to the extensive and well-established Sprint and Verizon Wireless network and facilities and believes that the Sprint and Verizon Wireless networks are capable of managing traffic spikes that may occur during emergency situations and can reroute traffic in the event of damaged facilities. Blue Jay also understands that Sprint and Verizon Wireless have sufficient back-up power to ensure functionality if its external power supply is unavailable.

¹⁶ See *Lifeline Reform Order*, ¶ 230.

¹⁷ 47 C.F.R. § 54.202(a)(2).

e) *Blue Jay will satisfy applicable consumer protection and service quality standards.*¹⁸

Section 54.202(a)(3) of the Commission's rules states that a wireless applicant's commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA Consumer Code") will satisfy this consumer protection and service quality requirement. Blue Jay intends to fully comply with applicable consumer protection requirements and commits to comply with the CTIA Consumer Code. Blue Jay agrees to comply with the CTIA Consumer Code to ensure it offers its subscribers the highest level of protection and quality service.¹⁹ Blue Jay's pledge to provide quality service and voluntarily to comply with this code evidences its commitment to satisfying all of the applicable consumer protection and service quality standards.

f) *Blue Jay is financially and technically capable of providing Lifeline services in compliance with the Commission's rules*

Revised Commission rule 54.202(a)(4), 47 C.F.R. 54.202(a)(4), requires ETC petitioners to demonstrate financial and technical capability to comply with the Commission's Lifeline service requirements.²⁰ Among the factors the Commission will consider are: a carrier's prior offering of service to non-Lifeline subscribers, the length of time the carrier has been in business, whether the carrier relies exclusively on Lifeline reimbursement to operate, whether the carrier receives revenues from other sources and whether the carrier has been the subject of an enforcement action or ETC revocation proceeding.

Through its affiliates, Blue Jay has provided marketing services including to low-income customers since 2004. One of the Company's affiliates, Splash Media, LP, is among the

¹⁸ 47 C.F.R. § 54.202(a)(3).

¹⁹ See 47 C.F.R. § 54.202(a)(3).

²⁰ *Lifeline Reform Order*, ¶¶ 387-388 (revising Commission rule 54.202(a)(4)).

largest providers of full-service social media marketing services in the world. Another affiliate, Link Distributors, LLC, is a leading distributor of wireless handsets and Lifeline enrollment for ETCs. Both businesses have substantial revenues with a long-term profitability, are in good standing with all of their vendors and have been providing customers with services for a combined nine years. As a core part of its marketing strategy, Blue Jay will be actively marketing to non-Lifeline customers targeting the prepaid, credit challenged and underbanked sector, and, consequently, will not be relying exclusively on Lifeline reimbursement for the Company's operating revenues. Blue Jay also has access to other financial resources including substantial cash reserves from its owners. The Company has not been subject to enforcement sanctions or ETC revocation proceedings in any state.

*(g) Terms and conditions of Blue Jay's voice telephony service plans for Lifeline subscribers.*²¹

As noted in Section III(c), *supra*, Blue Jay will offer Lifeline subscribers attractive voice telephony service plans. The Company's Lifeline subscribers will be eligible to receive the same service plans that Blue Jay generally will make available to the public. The Company's Lifeline offering will provide customers with 125 anytime prepaid minutes per month, with text messaging at a rate of 1 voice minute per text, with rollover, at no charge. Additionally, the Company will offer a 250 anytime talk and text plan without rollover (also one minute of talk time for each text). Lifeline customers can purchase additional bundles of minutes for as low as \$0.05/minute depending on the minute package purchased. For example, customers can purchase a 200 minute package for \$10.00. Airtime "top-up" minutes will be available for purchase at the Company's retail locations and on its website. Additional

²¹ 47 C.F.R. § 54.202(a)(5).

information regarding the Company's plans, rates and services can be found on its website www.bluejaywireless.com.

h) *Blue Jay will comply with the additional ETC obligations.*

Blue Jay is aware of the Commission's current requirements regarding certification and verification of a customer's qualification for Lifeline service and has implemented procedures to ensure the requirements are met. As described in Blue Jay's Compliance Plan, filed on May 11, 2012, Blue Jay has detailed and comprehensive procedures in place to address customer certification and verification requirements as well as those requirements addressing de-enrollment and duplication of service. These procedures comply with the Commission's recently-revised customer certification and verification requirements.²² Blue Jay also will comply with the annual certification and reporting requirements and the Commission's measures to prevent waste, fraud and abuse of Lifeline services.²³

Blue Jay will not collect service deposits for its plans and will not charge a number-portability fee, including for Lifeline accounts.²⁴ Blue Jay will timely pay all applicable federal, state, and local regulatory fees, including universal service and E911 fees.

²² 47 C.F.R. § 54.410.

²³ 47 C.F.R. §§ 54.416, 54.422; *See also In re: Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, et al.*, 25 FCC Rcd 17797, ¶ 24 (2010) ("2010 Virgin Mobile ETC Order").

²⁴ *See* 47 C.F.R. § 54.401(c), (e).

*(i) Blue Jay will advertise the availability of its service and charges in a manner reasonably designed to reach Lifeline-eligible consumers and will comply with the Commission's revised rules regarding information to be included in advertisements.*²⁵

Blue Jay intends to advertise its Lifeline services using media such as newspapers of general circulation, and radio and television, as a means of reaching those consumers that are likely to qualify for Lifeline services. The Company will use these advertising media to advertise the availability of its services to Lifeline customers and will expand its advertising efforts if necessary to ensure that Lifeline-eligible customers are aware of the service offerings.²⁶ Blue Jay will ensure that all of its Lifeline advertising materials comply with the Commission's revised rule section 54.405(c) once that rule takes effect. Specifically, Blue Jay's advertising materials will state, in easily understood language, that: (i) the service is a Lifeline service; (ii) Lifeline is a government assistance program; (iii) the service may not be transferred to someone else; (iv) consumers must meet certain eligibility requirements before enrolling in the Lifeline program; (v) the Lifeline program permits only one Lifeline discount per household; (vi) that documentation is necessary for enrollment; (vii) Blue Jay is the provider of the services and (viii) Blue Jay's Lifeline application/certification form²⁷ will state that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program.

²⁵ 47 C.F.R. §§ 54.201(d)(2), 54.405(b).

²⁶ See 47 C.F.R. § 54.405(b).

²⁷ See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Erratum, ¶ 63 (rel. May 16, 2012).

IV. THE PUBLIC INTEREST WILL BENEFIT FROM GRANTING ETC STATUS TO BLUE JAY

The Commission's rules require that, before granting a request for ETC designation, the Commission must find that grant of the designation would be in the public interest.²⁸ In determining if the public interest showing has been met, the Commission considers the "benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering."²⁹ In addition, the principal goal of the Lifeline program is to make affordable telecommunications services available to low-income consumers.³⁰

Similar to the Commission's findings justifying grant of ETC designation to other petitioners, designation of Blue Jay as an ETC for Lifeline purposes will further the Commission's goals for the Lifeline program. Specifically, the Company will offer prepaid low cost wireless service to low-income consumers thereby increasing consumer choice by enabling the entry of a provider offering affordable telecommunications services to low-income consumers.³¹

Further, grant of the application will provide consumers with access to high quality service and the benefits of a mobile service.³² The mobility of the service will be particularly attractive to Lifeline-eligible consumers who may frequently change residences or work in migratory jobs. Wireless service therefore offers a stable contact method where

²⁸ 47 C.F.R. § 54.202(b).

²⁹ See, e.g., *2010 Virgin Mobile ETC Order*, ¶ 6.

³⁰ See, e.g., *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004).

³¹ See, e.g., *Virgin Mobile USA, L.P. Petition for Forbearance from 47 USC §214(e)(1)(A)*, Order, FCC 09-18, ¶ 38 (rel. March 5, 2009) ("2009 Virgin Mobile Forbearance/ETC Order").

³² See *2009 Virgin Mobile Forbearance/ETC Order*, ¶ 38. As discussed above, Blue Jay will comply with the Consumer Code for Wireless Service of CTIA – The Wireless Association.

traditional landline service would be unavailable or not a viable option. Blue Jay's prepaid wireless service is an especially attractive option for low-income consumers because it alleviates customer concerns regarding hidden costs, varying monthly charges and long term contract issues.

In the current economy, many consumers are faced with making difficult choices about how to allocate and spend their limited resources. The ability to meet their communications needs while at the same time anticipating and controlling the associated costs is critical. Blue Jay's prepaid service offerings and rechargeable mobile phone plans will enable customers to tailor their wireless services to their needs and budgets and the prepaid nature of the service also will provide an alternative for "unbanked" consumers. Further, Blue Jay will not impose credit checks thereby providing an alternative for those low-income consumers unable to obtain credit for post-paid services provided by traditional carriers.

Blue Jay's prepaid mobile calling service packages will provide low-income consumers with a generous number of included, anytime minutes at no cost to the consumers as well as 911 emergency calling. These "free" minutes and services are an invaluable resource for cash-strapped consumers who may be seeking employment and need a means to contact potential employers. The packages are also useful for those consumers that need the ability to stay in touch with children or other family members as well as to contact 911 emergency services when needed. Blue Jay's services will provide consumers with a valuable alternative for obtaining telephone service and this competition in turn could spur other service providers to improve their service options.

V. ANTI-DRUG ABUSE CERTIFICATION

Blue Jay certifies that no party to this Petition is subject to a denial of federal benefits that includes Commission benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

VI. CONCLUSION

For the foregoing reasons, Blue Jay asserts that grant of the instant Petition for Limited Designation as an Eligible Telecommunications Carrier is in the public interest and is warranted in accordance with 47 U.S.C. § 214(e)(6) of the Act.

Respectfully submitted,



John J. Heitmann
Joshua T. Guyan
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8400

Counsel to Blue Jay Wireless, LLC

May 21, 2012

DECLARATION

I, David Wareikis, CEO of Blue Jay Wireless, LLC do hereby affirm under penalty of perjury that I have reviewed all of the factual assertions set forth in the foregoing petition for ETC status and that all such statements made therein are true and correct to the best of my knowledge, information and belief.

To the best of my knowledge, no party to this Petition, nor any of their officers, directors, or persons holding five percent or more of the outstanding stock or shares (voting or non-voting) as specified in Section 1.2002(b) of the Commission's rules are subject to denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

Executed on May 21, 2012

A handwritten signature in cursive script, reading "David A. Wareikis", is written over a horizontal line.

David Wareikis
CEO

EXHIBIT A

Alabama Public Service Commission

Orders

**PINE BELT CELLULAR, INC. and PINE
BELT PCS, INC.,**

Joint Petitioners

**PETITION: For ETC status and/or
clarification regarding the jurisdiction of
the Commission to grant ETC status to
wireless carriers.**

DOCKET U-4400

ORDER

BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural

service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12th day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

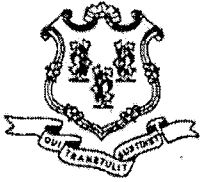
Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

November 8, 2010

In reply, please refer to:
UR:PAP

Jacqueline Hankins
Helein & Marashlian
1420 Spring Hill Rd
Suite 205
McLean, VA 22102

Re: Request for Letter Clarifying Jurisdiction Over Wireless ETC Petitions

Dear Ms. Hankins:

The Department of Public Utility Control (Department) acknowledges receipt of your October 25, 2010 letter filed on behalf of Boomerang Wireless, LLC d/b/a Ready Mobile (Ready Mobile) requesting clarification as to whether the Department claims jurisdiction to designate wireless eligible telecommunications carriers (ETC) in Connecticut.

The Department does not regulate or license mobile carrier services' rates and charges and therefore, Ready Mobile should apply to the Federal Communications Commission for purposes of being designed an ETC.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Kimberley J. Santopietro
Executive Secretary



STATE OF DELAWARE
PUBLIC SERVICE COMMISSION

361 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 739 - 4247
FAX: (302) 739 - 4849

July 15, 2009

L. Charles Keller, Jr.
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Ste. 700
Washington, DC 20037

RE: *Conexions LLC*

Dear Mr. Keller:

You have requested a statement confirming that the Delaware Public Service Commission ("PSC") lacks the jurisdiction to designate your client, Conexions, LLC ("Conexions"), as an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e). You have represented that Conexions is a new mobile virtual network operator who seeks to participate in the FCC's Lifeline support program for qualifying low-income consumers.

Under state law, the Delaware PSC does not currently exercise any form of supervisory jurisdiction over wireless commercial mobile radio service ("CMRS") providers. *See* 26 *Del. C.* § 102(2) (excluding "telephone service provided by cellular technology, or by domestic public land mobile radio service" from the definition of "public utility"); 26 *Del. C.* § 202(c) (providing that the Delaware Commission has "no jurisdiction over the operation of domestic public land mobile radio service provided by cellular technology service or over rates to be charged for such service or over property, property rights, equipment of facilities employed in such service"). In fact, in granting ETC status in Delaware for Cellco Partnership d/b/a Bell Atlantic Mobile, the FCC accepted the Delaware PSC's confirmation at that time that it did not have jurisdiction under state law to designate CMRS providers as ETCs. *See Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*; Memorandum Opinion and Order, 16 FCC Rcd. 39 (2000), at ¶¶ 3-4. There have been no changes to state law regarding the PSC's authority over CMRS providers since the *Cellco* decision.

L. Charles Keller, Jr.
July 15, 2009
Page 2

I hope this addresses your request for confirmation that the Delaware Public Service Commission does not have jurisdiction under state law to designate CMRS providers, such as Conexions LLC, as an ETC.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce H. Burcat".

Bruce H. Burcat
Executive Director

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE INC., TO MODIFY THE)
LIFELINE SERVICE BY ADDING AN INCOME) PSC DOCKET NO. 05-016T
QUALIFIER TO THE ELIGIBILITY CRITERIA)
(FILED JUNE 17, 2005))

ORDER NO. 6736

This 11th day of October, 2005, the Commission determines and Orders the following:

1. In the jargon of the federal Lifeline/Link-Up program, Delaware is a "federal default State." Delaware has never, by either state law or state regulation, ordained, nor funded, a stand-alone program to provide discounts on basic telephone services charges for low-income subscribers. Consequently, it was not until 1997, when the Federal Communications Commission ("FCC") revamped the federal Lifeline/Link-Up program, that Delaware subscribers first became eligible for participation in the federal Lifeline program.¹ And given that in a "federal default State" only federally-raised monies are used to reimburse eligible carriers for the Lifeline and Link-Up discounts, it is the FCC, and not the state commission, that gets to call the tune about who should be eligible to receive these federally-subsidized price reductions.

2. Since 1997, Verizon Delaware Inc. ("VZ-DE") has been designated as an "eligible telecommunications carrier" and has offered

¹See PSC Order No. 4684 (Dec. 16, 1997) (summarizing Delaware history and electing to allow "Tier 2" federal support to eligible Delaware subscribers).

federal Lifeline discounts on the federal list of supported services.² And even though in "default" States, Lifeline is almost an exclusively federal program, VZ-DE has, since 1997, filed at the State level, tariff provisions setting forth its Lifeline offerings.³

3. In 2004, the FCC changed some of the "eligibility" rules describing which subscribers may participate in the federal Lifeline/Link-Up program.⁴ In particular, the 2004 amendments added additional programs to the list of "eligible" programs where participation confers federal default Lifeline/Link-Up eligibility.⁵ The 2004 amendments also introduced an additional eligibility criteria premised on the subscriber's household income.⁶ Eligible telecommunications carriers, such as VZ-DE, were given one year to implement this new, additional income-based eligibility criteria.⁷

4. To implement these changes prescribed by the FCC, VZ-DE initially filed revisions to the Lifeline and Link-Up portions of its

²See PSC Order No. 4680 (Dec. 17, 1997) ("ETC" designation for VZ-DE). See also PSC Dckt. No. 97-023T (initial Lifeline tariff filing by VZ-DE).

³From December 2000 through December 2003, VZ-DE offered, under its state tariff, an "expanded" Lifeline program for Delaware. The discounts under such program exceeded the Tiers 1 & 2 levels normally available in a default State. VZ-DE offered this expanded program to fulfill a condition imposed by the FCC in approving the Bell Atlantic-GTE merger. See PSC Order No. 6317 (Dec. 9, 2003) (explaining content and cause of this expanded Lifeline offering). Whether Delaware remained a "default State" during this period when VZ-DE subsidized the deeper discounts is an issue that need now be explored or resolved. This "expanded" program ended in December 2003.

⁴In the Matter of Lifeline and Link-Up, Report and Order and Further NPRM, 19 FCC Rcd. 8302 (FCC 2004) ("Lifeline Order").

⁵47 C.F.R. §§ 54.409(b) (Lifeline eligibility criteria in "default" State); 54.415(b) (Link-Up eligibility criteria in "default" State).

⁶47 C.F.R. §§ 54.409(b), 54.410 (Lifeline); 54.415(b), 54.416 (Link-Up).

⁷47 C.F.R. §§ 54.410(a)(ii), 54.416.

State tariff. These changes incorporated into the State tariff provisions the expanded list of "eligibility-conferring" programs.⁸ At the same time, the Commission Staff began discussions with VZ-DE to determine whether, under the applicable federal default rules, it was appropriate for VZ-DE to continue to include in its State tariff Lifeline provisions language that conditioned Lifeline eligibility on the subscriber foregoing the ability to purchase many optional or vertical services.⁹ Eventually, VZ-DE revised its State tariff Lifeline provisions to delete the questioned restrictions.¹⁰ Then in June 2005, VZ-DE filed another Tariff revision to reflect its implementation of the household-income criteria for eligibility for Lifeline and Link-Up discounts.¹¹ Finally, on September 9, 2005, VZ-DE submitted another set of revised tariff sheets reflecting further textual revisions, as originally suggested by Staff. In part, these final changes sought to make the State tariff's description of how VZ-DE would administer its Lifeline/Link-Up program to more closely parallel the governing federal default rules.¹²

⁸See PSC Dckt. No. 04-017T (filed July 26, 2004; eff. July 27, 2004).

⁹That restriction - limiting Lifeline subscribers to a small group of designated vertical services - had been a continual part of VZ-DE's state-tariffed Lifeline offerings since 1997. In its Lifeline Order, the FCC expressed its belief that "any restriction on the purchase of vertical services may discourage qualified consumers from enrolling and may serve as a barrier to participation in the [Lifeline] program. Lifeline Order at ¶ 53.

¹⁰See PSC Dckt. No. 05-008T (filed April 8, 2005; eff. April 16, 2005).

¹¹See PSC Dckt. No. 05-016T (filed June 17, 2005; eff. June 22, 2005).

¹²See PSC Dckt. No. 05-016T, amended tariff sheets filed on September 9, 2005 but with effective date of June 22, 2005).

5. The Commission enters this Order not so much to "approve" the various Lifeline filings made by VZ-DE but to recount the course of the filings made since the FCC changed its federal Lifeline/Link-Up program in 2004. Indeed, given that Delaware is a "default" State, VZ-DE's Lifeline/Link-Up offerings are governed more by the federal default rules than by any "approved" State tariff provision. Any State tariff provision that might conflict with a federal default rule would necessarily have to yield. However, the Commission will accept the Lifeline and Link-Up tariff filings lodged by VZ-DE. The Commission believes that VZ-DE's last submission (in September 2005) sets forth a Lifeline and Link-Up offering that is consistent with the federal default rules. However, the filing and acceptance of the State tariff provisions should not be seen as foreclosing any later challenge that VZ-DE's program falls short of the federal directives.

Now, therefore, **IT IS ORDERED:**

1. That, as explained in the body of this Order, the Commission accepts the tariff filings made by Verizon Delaware Inc., to implement its responsibilities to provide federal Lifeline and Link-Up in this "federal default" jurisdiction. In particular, the Commission now accepts the tariff revision filing made September 9, 2005 pertaining to the following leaves in P.S.C.-Del.-No. 1:

Section 20D, Fourteenth Revised Sheet 1 (Link-Up);

Section 20D, Fifth Revised Sheet 2 (Link-Up); and

Section 20E, Eighth Revised Sheet 2 (Lifeline).

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

ATTEST:

/s/ Norma J. Sherwood
Acting Secretary



Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpsc.org

March 27, 2012

Via First Class Mail

John J. Heitmann and Joshua T. Guyan
Kelley Drye & Warren LLP
Washington Harbour Suite 400
3050 K Street, NW
Washington, DC 20007-5108

Dear Mr. Heitmann and Mr. Guyan:

Thank you for your March 23, 2012 letter requesting information on whether the Public Service Commission of the District of Columbia ("Commission") designates wireless telecommunications carriers as eligible telecommunications carriers ("ETC") for the purposes of receiving federal universal service funding. Please be advised that, pursuant to section 34-2006(b) of the District of Columbia Code, the Commission does not have jurisdiction over wireless carriers. Thus, the Commission has no authority to designate wireless telecommunications carriers as ETCs.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact Lara Walt at 202-626-9191 or lwalt@psc.dc.gov.

Sincerely,

A handwritten signature in black ink, which appears to read "Richard A. Beverly".

Richard A. Beverly
General Counsel

Enclosure



D.C. Council Home

Home Search Help ©



Welcome to the online source for the District of Columbia Official Code

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

District of Columbia Official Code 2001 Edition Currentness

Division V. Local Business Affairs

Title 34. Public Utilities.

§ Subtitle V. Telecommunications.

§ Chapter 20. Telecommunications Competition.

➔ § 34-2006. Exemptions.

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

- (1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;
- (2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;
- (3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or
- (4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

DC CODE § 34-2006

Current through January 11, 2012

Copyright (C) 2012 By the District of Columbia. All Rights Reserved.

END OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Docs In Sequence

Westlaw, part of Thomson Reuters

[© 2012 West](#) | [Privacy](#) | [Accessibility](#)



THOMSON REUTERS

COMMISSIONERS:
ART GRAHAM, CHAIRMAN
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO E. BALBIS
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL
S. CURTIS KISER
(850) 413-6199

Public Service Commission

October 24, 2011

Ms. Kasey C. Chow
Lance J.M. Steinhart, P.C.
Attorney At Law
1725 Windward Concourse
Suite 150
Alpharetta, GA 30005


Re: Undocketed – Q Link Wireless LLC's ETC Designation

Dear Ms. Chow:

We received your October 18, 2011 letter advising that Q Link Wireless LLC, a commercial mobile radio service provider, wish to seek designation as an ETC in Florida. You also requested an affirmative statement that the Florida Public Service Commission no longer assert jurisdiction to designate commercial mobile radio service providers as eligible telecommunication carriers in Florida.

This letter acknowledges that the revisions to Chapter 364, Florida Statutes, changed the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider Q Link Wireless LLC's bid for ETC status.

Sincerely,


S. Curtis Kiser
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel
Ann Cole, Commission Clerk, Office of Commission Clerk

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Clifton C. Below
Amy L. Ignatius

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

March 28, 2011

RE: ETC Certification in New Hampshire

The federal Universal Service Fund (USF) was created by the Federal Communications Commission (FCC) to promote the availability of quality services at just and reasonable rates to all consumers including low-income customers and those in high cost areas and to increase nationwide access to advanced services in schools, libraries and rural health care facilities. To qualify for universal service funding a carrier must first be certified as an Eligible Telecommunications Carrier (ETC) by the state public utilities commission or, if the state does not assert this authority, by the FCC. *See* 47 U.S.C. §214 (e).

The New Hampshire Public Utilities Commission maintains authority to determine whether landline telecommunications carriers qualify as ETCs. Pursuant to New Hampshire RSA 362:6, the Commission has no jurisdiction over mobile radio communications services. Consequently, the state declines jurisdiction over the certification of wireless carriers as ETCs, leaving that responsibility to the FCC.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Anne Ross".

F. Anne Ross
General Counsel
New Hampshire Public Utilities Commission

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

GARRY A. BROWN
Chairman
PATRICIA L. ACAMPORA
MAURKEEN F. HARRIS
ROBERT E. CURRY JR.
JAMES L. LAROCCA
Commissioners



PETER MCGOWAN
General Counsel

JACLYN A. BRILLING
Secretary

July 28, 2010

TO WHOM IT MAY CONCERN:

Re: i-wireless CMRS Jurisdiction

We have received a letter from i-wireless, LLC (i-wireless), requesting a statement that the New York State Public Service Commission does not exercise jurisdiction over CMRS providers for the purpose of making determinations regarding Eligible Telecommunications Carrier designations under section 214 (e)(6) of 47 U.S.C. In response to this request, please be advised that section 5 (6)(a) of the New York State Public Service Law provides that:

Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination as of this date that regulation should be reinstituted under section 5 (6)(a) of the Public Service Law. Consequently, based on the representation by i-wireless that it is a mobile virtual network operator reselling wireless services, i-wireless would not be subject to New York State Public Service Commission jurisdiction for the purpose of making an Eligible Telecommunications Carrier designation.

Very truly yours,

Maurkeen J. McCauley
Maurkeen J. McCauley
Assistant Counsel

M. Cauley

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133o

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Designation of Carriers Eligible for Universal)
Carrier Support) ORDER GRANTING PETITION

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility," See, G.S. 82-3(23). Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-5(23)), enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

W002303.01

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

)
)
)
)
)

DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier ("Application")* filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re Universal Service Generic Contested Case*, Docket 97-05222, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the Intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

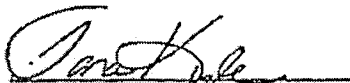
In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴

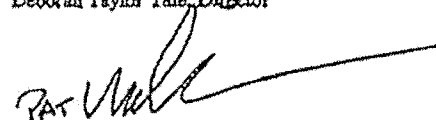
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 95-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.R. 12208, 12264, § 113 (June 30, 2000).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION DOCUMENT CONTROL
AT RICHMOND, APRIL 9, 2004

IN RE:

2004 APR -9 A 11:46

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC-2001-00263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e) (2)

ORDER INVITING COMMENTS AND/OR REQUESTS FOR HEARING

On December 21, 2001, Virginia Cellular LLC ("Virginia Cellular") filed an application with the State Corporation Commission ("Commission") for designation as an eligible telecommunications carrier ("ETC"). This was the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.¹ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002. Our Order of April 9, 2002, found that § 214(e)(6) of the Act is applicable to Virginia Cellular's application because this Commission has not asserted jurisdiction over CMRS carriers and that Virginia Cellular should apply to the Federal Communications Commission ("FCC") for ETC designation.

Virginia Cellular filed its Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia with the FCC on April 26, 2002. On January 22, 2004, the FCC released its order designating Virginia Cellular as an ETC in specific portions of its licensed

¹ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

service area in the Commonwealth of Virginia subject to certain conditions ("FCC's January 22, 2004, Order").²

The FCC's January 22, 2004, Order further stated that Virginia Cellular's request to redefine the service areas of Shenandoah Telephone Company ("Shentel") and MGW Telephone Company ("MGW") in Virginia pursuant to § 214(3)(5) of the Telecommunications Act of 1996 ("Act") was granted subject to the agreement of this Commission. On March 2, 2004, the FCC filed its January 22, 2004, Order as a petition in this case.³

Section 214(e)(5) of the Act states:

SERVICE AREA DEFINED. - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In this instance, the FCC has determined that the service areas of Shentel and MGW, which are both rural telephone companies under the Act, should be redefined as requested by Virginia Cellular.⁴ The FCC further recognizes that the "Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to determine the redefinition proposal and examine whether it should be approved."⁵

² CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*.

³ See paragraph 45 of the FCC's January 22, 2004, Order. The FCC, in accordance with § 54.207(d) of its rules, requests that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the FCC's rules. A copy of the petition can be obtained from the Commission's website at: <http://www.state.va.us/scc/caseinfo.htm>.

⁴ The FCC denied Virginia Cellular's request to redefine the study area of NTELOS. See paragraph 50 of the FCC's January 22, 2004, Order.

⁵ The FCC's January 24, 2004, Order at paragraph 2. (citations omitted)

The Commission finds that interested parties should be afforded the opportunity to comment and/or request a hearing regarding the FCC's petition to redefine the service areas of Shentel and MGW. We note that the FCC believes that its proposed redefinition of these service areas should not harm either Shentel or MGW.⁶ However, we request any interested party to specifically address in its comments whether our agreeing to the FCC's proposal to redefine the service areas of Shentel and MGW would harm these companies.

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that interested parties should be allowed to comment or request a hearing regarding the FCC's proposed redefinition of Shentel's and MGW's service areas.

Accordingly, IT IS ORDERED THAT:

(1) Any interested party desiring to comment regarding the redefinition of Shentel's and MGW's service areas may do so by directing such comments in writing on or before May 7, 2004, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested parties desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(2) On or before May 7, 2004, any interested party wishing to request a hearing regarding the redefinition of Shentel's and MGW's service areas shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2001-00263 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter.

⁶ See paragraphs 43 and 44 of the FCC's January 22, 2004, Order.

(3) On or before June 1, 2004, interested parties may file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the comments and requests for hearing filed with the Commission. A copy of the response shall be delivered to any person who filed comments or requests for hearing.

(4) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each local exchange telephone company licensed to do business in Virginia, as shown on Attachment A hereto; David A. LaFuria, Esquire, Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, D.C. 20036; Thomas Buckley, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554; Virginia Telecommunications Industry Association, c/o Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; L. Ronald Smith, President and General Manager, Shenandoah Telephone Company, P.O. Box 105, Williamsville, Virginia 24487; Lori Warren, Director of Regulatory Affairs, MGW Telephone Company, P.O. Box 459, Edinburg, Virginia 22824-0459; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.

EXHIBIT B

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	
Telecommunications Carriers Eligible to Receive Universal Service Support	WC Docket No. 09-197
Lifeline and Link Up Reform and Modernization	WC Docket No. 11-42
Blue Jay Wireless, LLC	

BLUE JAY WIRELESS, LLC COMPLIANCE PLAN

Blue Jay Wireless, LLC (“Blue Jay” or the “Company”),¹ through its undersigned counsel, hereby respectfully submits and requests expeditious treatment of its Compliance Plan outlining the measures it will take to implement the conditions imposed by the Commission in its *Lifeline Reform Order*.²

¹ The Company hereby also reports its corporate and trade names, identifiers, and its holding company, operating companies and affiliates as: Link Distributors, LLC (affiliate), Cardinal Wireless Distributors, LLC (affiliate), Timber Creek Wireless Fund I, LLC (affiliate), Splash Media, LP (affiliate), Agency Matrix, LLC (affiliate), Drivers Insurance Group, LLC (affiliate), Cobalt Real estate Services, LLC (affiliate), P.C. Processing, Inc. (affiliate), Team Systems, LLC (affiliate), LeadStart, LLC (affiliate), CenCal Holdings, LLC (affiliate), Timber Creek Capital, LP (affiliate) and Timber Creek Ranch, LP (affiliate).

² See *Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report And Order and Further Notice Of Proposed Rulemaking, FCC 12-11 (Feb. 6, 2012) (“*Lifeline Reform Order*”). The Company herein submits the information required by the Compliance Plan Public Notice. See *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform*

The Company commends the Commission's commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers. The Company will comply with 911 requirements as described below and it is submitting this Compliance Plan in order to qualify for blanket forbearance from the facilities requirement of section 214(e)(1)(A) of the Communications Act and participate as an eligible telecommunications carrier ("ETC") in the Lifeline program.³

The Company will comply fully with all conditions set forth in the *Lifeline Reform Order*, as well as with the Commission's Lifeline rules and policies more generally.⁴ This Compliance Plan describes the specific measures that the Company intends to implement to achieve these objectives. Specifically, this Compliance Plan: (1) describes the specific measures that the Company will take to implement the obligations contained in the *Lifeline Reform Order*, including the procedures the Company will follow in enrolling a subscriber in Lifeline and submitting for reimbursement for that subscriber from the Low-Income

Order, WC Docket Nos. 09-197, 11-42, Public Notice, DA 12-314 (rel. Feb. 29, 2012).

³ See *Lifeline Reform Order*, ¶ 368. Although the Company qualifies for and seeks to avail itself of the Commission's grant of forbearance from the facilities requirement of section 214(e)(1)(A) for purposes of the federal Lifeline program, the Company reserves the right to demonstrate to a state public utilities commission that it provides service using its own facilities in a state for purposes of state universal service funding under state program rules and requirements. The Company will follow the requirements of the Commission's Lifeline rules and this Compliance Plan in all states in which it provides Lifeline service and receives reimbursements from the federal Low-Income Fund.

⁴ In addition, this Compliance Plan is consistent with the compliance plan filed by Cricket Communications, Inc. See Notice of *Ex Parte* Communication of Cricket Communications, Inc., WC Docket No. 09-197 (Sept. 23, 2011) ("Cricket Compliance Plan"). The Wireline Competition Bureau approved the Cricket Compliance Plan on February 7, 2012. See *Telecommunications Carriers Eligible for Universal Service Support, Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, Order, DA 12-158 (Feb. 7, 2012).

Fund, materials related to initial and ongoing certifications and sample marketing materials; and (2) provides a detailed description of how the Company will offer Lifeline services, the geographic areas in which it will offer services, and a detailed description of the Company's Lifeline service plan offerings.

ACCESS TO 911 AND E911 SERVICES⁵

Pursuant to the *Lifeline Reform Order*, forbearance is conditioned upon the Company: (1) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; and (2) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services.⁶ The Company will comply with these conditions on the first day that it begins providing service.

The Company will provide its Lifeline customers with access to 911 and E911 services immediately upon activation of service. The Commission and consumers are hereby assured that all Company customers will have available access to emergency calling services at the time that Lifeline service is initiated, and that such 911 and E911 access will be available from Company handsets, even if the account associated with the handset has no minutes remaining.

The Company will use Sprint Nextel and Verizon Wireless its underlying wireless network providers/carriers through a Mobile Virtual Network Enabler (MVNE) intermediary – Natel Networks, LLC (“Natel Networks”). Sprint Nextel and Verizon Wireless will route 911 calls from the Company's customers in the same manner as 911

⁵ See Compliance Plan Public Notice at 3.

⁶ See *Lifeline Reform Order*, ¶ 373.

calls from their own retail customers. To the extent that these underlying wireless network providers/carriers are certified in a given PSAP territory, this 911 capability will function the same for the Company. The Company will also enable 911 emergency calling services for all properly activated handsets regardless of whether the account associated with the handset is active or suspended. Finally, the Company will transmit all 911 calls initiated from any of its handsets even if the account associated with the handset has no remaining minutes.

E911-Compliant Handsets. The Company will ensure that all handsets used in connection with the Lifeline service offering are E911-compliant. All of the Company's phones will be E911-capable handsets. The Company will use phones from suppliers that have been through a stringent certification process to ensure that the handset models used meet all 911 and E911 requirements. As a result, any new customer that qualifies for and enrolls in the Lifeline program is assured of receiving a 911/E911-compliant handset as well, free of charge.

COMPLIANCE PLAN

I. PROCEDURES TO ENROLL A SUBSCRIBER IN LIFELINE⁷

A. Policy

The Company will comply with the uniform eligibility criteria established in new section 54.409 of the Commission's rules (when it becomes effective on June 1, 2012), as well as any additional certification and verification requirements for Lifeline eligibility in states where the Company is designated as an ETC.

⁷ See Compliance Plan Public Notice at 3.

Therefore, all subscribers will be required to demonstrate eligibility based at least on: (1) household income at or below 135% of the Federal Poverty Guidelines for a household of that size; or (2) the household's participation in one of the federal assistance programs listed in new sections 54.409(a)(2) or 54.409(a)(3) of the Commission's rules. In addition, through the certification requirements described below, the Company will confirm that the subscriber is not already receiving a Lifeline service and no one else in the subscriber's household is subscribed to a Lifeline service.

B. Eligibility Determination

Blue Jay will qualify and enroll Lifeline customers through five primary input channels including: 1) Internet/Web Form Transaction, 2) Store and Field Form Transaction, 3) Toll-Free Facsimile Form Transaction, 4) USPS Mail Form Transaction and 5) Voice/IVR Form Transaction. Regardless of which channel the customer uses to apply for service, each customer will receive the same disclosures, be required to supply the same information and make the same certifications via Blue Jay's standard application/certification form (discussed further below and provided in Exhibit A.

As part of its enrollment process, Blue Jay will route all enrollment documentation through a common validation backbone that will perform five relevant verification checks in real-time before approving qualifying subscribers for Lifeline service. These five checks are: 1) Service Availability Verification (validates the availability of service to qualifying subscribers through a database of approved Blue Jay service areas); 2) Service Address Verification (validates the service address of qualifying subscribers through USPS and/or Melissa databases); 3) Non-Duplicate Subscriber Verification (confirms internal non-duplicate status of qualifying subscribers by a combination of name, address,

telephone number, date of birth and last four digits of Social Security number); 4) Identity Verification (validates the identity of qualifying subscribers through viewing government-issued identification or Lexis Nexis); and 5) Eligibility Verification (where available, validates the eligibility of qualifying subscribers through state-specific and program-specific Internet databases). In the event that such web services are unavailable or the qualifying subscriber shows proof of eligibility via physical documentation, Blue Jay will note the type of documentation presented; the timestamp of presentation; the Blue Jay employee, agent or representative (“Company personnel”) to whom the documentation was presented; and the deletion timestamp (for documentation that was physically received by Blue Jay). When available, Blue Jay will validate the eligibility and non-duplication of qualifying subscribers through the national database.

The manner in which the sales will be made will be slightly different, but the obligations imposed by the new rules will be addressed directly by Blue Jay. All employees will be thoroughly trained on the enrollment process to ensure all five relevant verification checks are made before approving qualified subscribers for Lifeline service.

If the Company cannot determine a prospective subscriber’s eligibility for Lifeline by accessing income databases or program eligibility databases, Company personnel will review documentation establishing eligibility pursuant to the Lifeline rules.⁸ All personnel who interact with current or prospective customers will be trained to assist Lifeline applicants in determining whether they are eligible to participate based on the federal and state-specific income-based and/or program-based criteria. These personnel will be trained to answer questions about Lifeline eligibility, and will review required documentation to

⁸ See *Lifeline Reform Order*, ¶ 100; section 54.410(b)(1)(i)(B), 54.410(c)(1)(i)(B); Cricket Compliance Plan at 4.

determine whether it satisfies the *Lifeline Reform Order* and state-specific eligibility requirements using state-specific checklists.⁹

Proof of Eligibility. Company personnel will be trained on acceptable documentation required to establish income-based and program-based eligibility.¹⁰ Acceptable documentation of program eligibility includes: (1) the current or prior year's statement of benefits from a qualifying state, federal or Tribal program; (2) a notice letter of participation in a qualifying state, federal or Tribal program; (3) program participation documents (*e.g.*, the consumer's Supplemental Nutrition Assistance Program (SNAP) electronic benefit transfer card or Medicaid participation card (or copy thereof)); or (4) another official document evidencing the consumer's participation in a qualifying state, federal or Tribal program.¹¹

Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workmen's Compensation statement of benefits; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information for at least three months time.¹²

Company personnel will examine this documentation for each Lifeline applicant, and will record the type of documentation used to satisfy the income- or program-based

⁹ See Cricket Compliance Plan at 6.

¹⁰ See *Lifeline Reform Order*, ¶ 101.

¹¹ *Id.* and section 54.410(c)(1)(i)(B).

¹² See *Lifeline Reform Order*, ¶101; section 54.410.(b)(1)(i)(B).

criteria by checking the appropriate box on the application form.¹³ The Company will not retain a copy of this documentation.¹⁴ For customers enrolled via the Internet, Toll-Free Facsimile, USPS Mail, or Voice/IVR, the customer will be required to fax or e-mail proof of eligibility documentation to the Company. Proof will be reviewed by Company personnel prior to service activation and then deleted. Where the Company personnel conclude that proffered documentation is insufficient to establish such eligibility, the Company will deny the associated application and inform the applicant of the reason for such rejection.¹⁵ In the event that Company personnel cannot ascertain whether documentation of a specific type is sufficient to establish an applicant's eligibility, the matter will be escalated to supervisory personnel at the Company's corporate headquarters.¹⁶

De-Enrollment for Ineligibility. If the Company has a reasonable basis to believe that one of its Lifeline subscribers no longer meets the eligibility criteria, the Company will notify the subscriber of impending termination in writing and in compliance with any state dispute resolution procedures applicable to Lifeline termination, and give the subscriber 30 days to demonstrate continued eligibility.¹⁷ A demonstration of eligibility must comply with the annual verification procedures below and found in new rule section 54.410(f), including the submission of a certification form.

¹³ See *Lifeline Reform Order*, ¶101; sections 54.410(b)(1)(iii), 54.410(c)(1)(iii).

¹⁴ See *Lifeline Reform Order*, ¶101; sections 54.410(b)(1)(ii), 54.410(c)(1)(ii).

¹⁵ See Cricket Compliance Plan at 6.

¹⁶ See *id.*

¹⁷ See *Lifeline Reform Order*, ¶ 143; section 54.405(e)(1).

C. Subscriber Certifications for Enrollment

The Company will implement certification policies and procedures that enable consumers to demonstrate their eligibility for Lifeline assistance to Company personnel as detailed in the *Lifeline Reform Order*, together with any additional state certification requirements.¹⁸ The Company shares the Commission's concern about abuse of the Lifeline program and is thus committed to the safeguards stated herein, with the belief that these procedures will prevent the Company's customers from engaging in such abuse of the program, inadvertently or intentionally.¹⁹ Every applicant will be required to complete an application/certification form containing disclosures, and collecting certain information and certifications as discussed below.²⁰ Applicants that do not complete the form in person will be required to return the signed application/certification to the Company by mail, facsimile, electronic mail or other electronic transmission. In addition, Company personnel will verbally explain the certifications to consumers when they are enrolling in person or over the phone.²¹

Disclosures. The Company's application and certification forms will include the following disclosures: (1) Lifeline is a federal benefit and willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program; (2) only one Lifeline service is available per household; (3) a household is defined, for purposes of the Lifeline program, as any individual or group of

¹⁸ *Lifeline Reform Order*, ¶ 61; section 54.410(a).

¹⁹ *See* Cricket Compliance Plan at 3.

²⁰ *See* Model Application/Certification Form, included as Exhibit A. *See* Compliance Plan Public Notice at 3.

²¹ *See Lifeline Reform Order*, ¶ 123.

individuals who live together at the same address and share income and expenses; (4) a household is not permitted to receive Lifeline benefits from multiple providers; (5) violation of the one-per-household limitation constitutes a violation of the Commission's rules and will result in the applicant's de-enrollment from the program; and (6) Lifeline is a non-transferable benefit and the applicant may not transfer his or her benefit to any other person.²²

Applications and certification forms will also state that: (1) the service is a Lifeline service, (2) Lifeline is a government assistance program, and (3) only eligible consumers may enroll in the program.²³

In addition, the Company will notify the applicant that the prepaid service must be personally activated by the subscriber and the service will be deactivated and the subscriber de-enrolled if the subscriber does not use the service for 60 days.²⁴

Information Collection. The Company will also collect the following information from the applicant in the application/certification form: (1) the applicant's full name;²⁵ (2) the applicant's full residential address (P.O. Box is not sufficient²⁶); (3) whether the applicant's residential address is permanent or temporary; (4) the applicant's billing address, if different from the applicant's residential address; (5) the applicant's date of birth; (6) the last four digits of the applicant's Social Security number (or the applicant's Tribal identification number, if the subscriber is a member of a Tribal nation and does not

²² See *id.*, ¶ 121; section 54.410(d)(1).

²³ See section 54.405(c).

²⁴ See *Lifeline Reform Order*, ¶ 257.

²⁵ See Cricket Compliance Plan at 4.

²⁶ See *Lifeline Reform Order*, ¶ 87.

have a Social Security number); (7) if the applicant is seeking to qualify for Lifeline under the program-based criteria, the name of the qualifying assistance program from which the applicant, his or her dependents, or his or her household receives benefits;²⁷ and (8) if the applicant is seeking to qualify for Lifeline under the income-based criterion, the number of individuals in his or her household.²⁸

Applicant Certification. Consistent with new rule section 54.410(d)(3), the Company will require the applicant to certify, under penalty of perjury, in writing or by electronic signature or interactive voice response recording,²⁹ the following: (1) the applicant meets the income-based or program-based eligibility criteria for receiving Lifeline; (2) the applicant will notify the Company within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the applicant no longer meets the income-based or program-based criteria for receiving Lifeline support, the applicant is receiving more than one Lifeline benefit, or another member of the applicant's household is receiving a Lifeline benefit; (3) if the applicant is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands; (4) if the applicant moves to a new address, he or she will provide that new address to the Company within 30 days; (5) if the applicant provided a temporary residential address to the Company, the applicant will be required to verify his or her temporary residential address every 90 days; (6) the applicant's household will receive only one Lifeline service and, to the best of the applicant's knowledge, the applicant's

²⁷ See Cricket Compliance Plan at 4.

²⁸ See section 54.410(d)(2). See Cricket Compliance Plan at 4.

²⁹ See *Lifeline Reform Order*. ¶¶ 168-69; section 54.419.

household is not already receiving a Lifeline service;³⁰ (7) the information contained in the applicant's certification form is true and correct to the best of the applicant's knowledge;³¹ (8) the applicant acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and (9) the applicant acknowledges that the applicant may be required to re-certify his or her continued eligibility for Lifeline at any time, and the applicant's failure to re-certify as to the applicant's continued eligibility will result in de-enrollment and the termination of the applicant's Lifeline benefits pursuant to the de-enrollment policy included below and in the Commission's rules.

In addition, the applicant will be required to authorize the Company to access any records required to verify the applicant's statements on the application/certification form and to confirm the applicant's eligibility for the Company Lifeline credit.³² The applicant must also authorize the Company to release any records required for the administration of the Company Lifeline credit program, including to USAC to be used in a Lifeline program database.³³

D. Annual Verification Procedures

The Company will annually re-certify all subscribers by querying the appropriate eligibility databases or obtaining a signed certification from each subscriber consistent with the certification requirements above and new section 54.410(d) of the Commission's

³⁰ See Cricket Compliance Plan at 4.

³¹ See *id.* at 5.

³² See Cricket Compliance Plan at 5.

³³ See Section 54.404(b)(9). The application/certification form will also describe the information that will be transmitted, that the information is being transmitted to USAC to ensure the proper administration of the Lifeline program and that failure to provide consent will result in the applicant being denied the Lifeline service. See *id.* See also Cricket Compliance Plan at 5.

rules. This certification will include a confirmation that the applicant's household will receive only one Lifeline service and, to the best of the subscriber's knowledge, the subscriber's household is receiving no more than one Lifeline service.³⁴ Further, the verification materials will inform the subscriber that he or she is being contacted to re-certify his or her continuing eligibility for Lifeline and if the subscriber fails to respond, he or she will be de-enrolled in the program.³⁵

2012 Verification. Blue Jay does not currently have any Lifeline customers. In the (unlikely) event that the Company has any Lifeline subscribers as of June 1, 2012, the Company will re-certify the eligibility of each of its existing subscribers as of June 1, 2012 on a rolling basis by the end of 2012 and report the results to USAC by January 31, 2013.³⁶ The Company will contact its subscribers via text message to their Lifeline supported telephone, or by mail, phone, email or other Internet communication. The notice will explain the actions the customer must take to retain Lifeline benefits, when Lifeline benefits may be terminated, and how to contact the Company.

Verification De-Enrollment. The Company will de-enroll subscribers that do not respond to the annual verification or fail to provide the required certification.³⁷ The Company will give subscribers 30 days to respond to the annual verification inquiry. If the subscriber does not respond, the Company will send a separate written notice explaining that failure to respond within 30 days will result in the subscriber's de-enrollment from the

³⁴ See *Lifeline Reform Order*, ¶ 120 and Cricket Compliance Plan at 8.

³⁵ See *Lifeline Reform Order*, ¶ 145.

³⁶ See *id.*, ¶ 130.

³⁷ See *id.*, ¶ 142; section 54.54.405(e)(4).

Lifeline program. If the subscriber does not respond within 30 days, the Company will de-enroll the subscriber within five business days.

E. Activation and Non-Usage

The Company will not consider a prepaid subscriber activated, and will not seek reimbursement for Lifeline for that subscriber, until the subscriber activates the Company's prepaid service by completing an outbound call. An outbound call must be made in order for the service to be activated and for Blue Jay to seek Lifeline reimbursement for that customer. For phones sold in-person, the customer must complete an outbound call in front of the representative upon taking possession of the phone in order to complete the enrollment process. In the event phones are mailed to the customer's address, the customer must dial an activation code which will connect them to a customer service representative. The customer then has to provide the customer service representative with identification information and confirm Lifeline service was ordered.

In addition, after service activation, the Company will provide a de-enrollment notice to subscribers that have not used their service for 60 days. After 60 days of non-use, the Company will provide notice to the subscriber that failure to use the Lifeline service within a 30-day notice period will result in de-enrollment.³⁸ Subscribers can "use" the service by: (1) completing an outbound call; (2) purchasing minutes from the Company to add to the subscriber's plan; (3) answering an incoming call from a party other than the

³⁸ See *Lifeline Reform Order*, ¶ 257; section 54.405(e)(3). See Cricket Compliance Plan at 2 (stating that it did not need to implement a non-usage policy because it offered only plans with unlimited local and long distance calling).

Company; or (4) responding to a direct contact from the Company and confirming that the subscriber wants to continue receiving the service.³⁹

If the subscriber does not respond to the notice, the subscriber will be de-enrolled and the Company will not request further Lifeline reimbursement for the subscriber. The Company will report annually to the Commission the number of subscribers de-enrolled for non-usage by month.⁴⁰

F. Additional Measures to Prevent Waste, Fraud and Abuse

To supplement its verification and certification procedures, and to better ensure that customers understand the Lifeline service restrictions with respect to duplicates, the Company will implement measures and procedures to prevent duplicate Lifeline benefits being awarded to the same household. These measures entail additional emphasis in written disclosures as well as live due diligence.⁴¹

In addition to checking the database when it becomes available, Company personnel will emphasize the “one Lifeline phone per household” restriction in their direct sales contacts with potential customers.⁴² Training materials will include a discussion of the limitation to one Lifeline phone per household, and the need to ensure that the customer is informed of this restriction.⁴³ All Company personnel interacting with existing and potential Lifeline customers will undergo training regarding the eligibility and certification requirements in the *Lifeline Reform Order* and this Compliance Plan.

³⁹ See *Lifeline Reform Order*, ¶ 261; section 54.407(c)(2).

⁴⁰ See *Lifeline Reform Order*, ¶ 257; section 54.405(e)(3).

⁴¹ See Cricket Compliance Plan at 9.

⁴² See *id.* at 6, 9.

⁴³ See *id.*

Blue Jay Company personnel that will interact with existing and potential Lifeline customers will be required to complete a rigorous training program upon commencing employment and prior to performing other duties for the Company. During this program, Company personnel are thoroughly trained on compliance practices, policies and procedures including, among other areas, a thorough training on the enrollment process. For example, Company personnel that will perform customer enrollment are trained on how to use the Company's office support systems, to read aloud the appropriate disclosures to prospective customers such as the "one-per-household" and activation and non-usage requirement disclosures, request additional documentation proving identity and address verification and what constitutes proof of eligibility, among other important practices.

Company personnel are also trained to display Blue Jay approved marketing materials and banners and wear Blue Jay branded t-shirts with name badges and pictures when performing in-person enrollment. Blue Jay will have a designated employee compliance training manager who is accessible to Company personnel for questions after training. Company personnel are also trained what to do in the event they suspect fraud or any violation. The Company has a whistleblower policy for Company personnel to immediately report any violation of compliance policies and procedures. If Company personnel violates any of the Company's or program's compliance policies and procedures, the terms and conditions of his or her employee or vendor agreement, or engages in any illegal, fraudulent, deceptive, or unethical business conduct, Blue Jay will invoke immediate disciplinary action and may contact appropriate authorities.

Database. When the National Lifeline Accountability Database (“National Database”) becomes available, the Company will comply with the requirements of new rule section 54.404. The Company will query the National Database to determine whether a prospective subscriber is currently receiving a Lifeline service from another ETC and whether anyone else living at the prospective subscriber’s residential address is currently receiving Lifeline service.⁴⁴

One-Per-Household. The Company will implement the requirements of the *Lifeline Reform Order* to ensure that it provides only one Lifeline benefit per household⁴⁵ through the use of its application and certification forms discussed above, internal database checks and its marketing materials discussed below. Upon receiving an application for the Company’s Lifeline service, the Company will search its own internal records to ensure that it does not already provide Lifeline-supported service to someone at the same residential address.⁴⁶ If so, and the applicant lives at an address with multiple households, the Company will require the applicant to complete and submit a written USAC document

⁴⁴ See *Lifeline Reform Order*, ¶ 203. Company will also transmit to the National Database the information required for each new and existing Lifeline subscriber. See *Lifeline Reform Order*, ¶¶ 189-195; section 54.404(b)(6). Further, Company will update each subscriber’s information in the National Database within ten business days of any change, except for de-enrollment, which will be transmitted within one business day. See section 54.404(b)(8),(10).

⁴⁵ A “household” is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians. See *Lifeline Reform Order*, ¶ 74; section 54.400(h).

⁴⁶ See *Lifeline Reform Order*, ¶ 78 and Cricket Compliance Plan at 7.

containing the following: (1) an explanation of the Commission's one-per-household rule; (2) a check box that an applicant can mark to indicate that he or she lives at an address occupied by multiple households; (3) a space for the applicant to certify that he or she shares an address with other adults who do not contribute income to the applicant's household and share in the household's expenses or benefit from the applicant's income, pursuant to the Commission's definition; and (4) the penalty for a consumer's failure to make the required one-per-household certification (*i.e.*, de-enrollment).⁴⁷ Further, if a subscriber provides a temporary address on his or her application/certification form collected as described above, the Company will verify with the subscriber every 90 days that the subscriber continues to rely on that address.⁴⁸

Finally, Company personnel will inform each Lifeline applicant that he or she may be receiving Lifeline support under another name, and facilitate the applicant's understanding of what constitutes "Lifeline-supported services," and ability to determine whether he or she is already benefiting from Lifeline support, by informing the consumer that all Lifeline services may not be currently marketed under the name Lifeline.

Marketing Materials. Within the deadline provided in the *Lifeline Reform Order*, the Company will include the following information regarding its Lifeline service on all marketing materials describing the service: (1) it is a Lifeline service,⁴⁹ (2) Lifeline is a government assistance program, (3) the service is non-transferable, (4) only eligible consumers may enroll in the program, (5) the program is limited to one discount per

⁴⁷ *Id.*

⁴⁸ *See Lifeline Reform Order*, ¶ 89.

⁴⁹ *See Cricket Compliance Plan* at 4.

household; (6) what documentation is necessary for enrollment;⁵⁰ (7) Blue Jay's name (the ETC); and (8) consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program.⁵¹ These statements will be included in all print, audio video and web materials (including social networking media) used to describe or enroll customers in the Company's Lifeline service offering, as well as the Company's application forms and certification forms.⁵² This specifically includes the Company's website (www.bluejaywireless.com) and outdoor signage.⁵³ A sample of the Company's marketing materials is included as Exhibit B.

G. Company Reimbursements From the Fund

To ensure that the Company does not seek reimbursement from the Fund without a subscriber's consent, the Company will certify, as part of each reimbursement request, that it is in compliance with all of the Commission's Lifeline rules and, to the extent required, has obtained valid certification and verification forms from each of the subscribers for whom it is seeking reimbursement.⁵⁴ Further, the Company will submit its FCC Forms 497 to the eighth day of each month in order to be reimbursed the same month.⁵⁵

In addition, the Company will keep accurate records as directed by USAC⁵⁶ and as required by new section 54.417 of the Commission's rules. For example, Blue Jay will

⁵⁰ See Cricket Compliance Plan at 4.

⁵¹ See *Lifeline Reform Order*, ¶ 275; section 54.405(c).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See *Lifeline Reform Order*, ¶ 128; section 54.407(d).

⁵⁵ See *Lifeline Reform Order*, ¶¶ 302-306.

⁵⁶ See section 54.407(e).

keep the following records for each subscriber's individual Lifeline account, among other records, if applicable and as permitted: 1) date that Blue Jay queried the duplicates database; 2) date and information that Blue Jay transmitted to the duplicates database; 3) date of transmission of updated customer information to database; 4) date and database upon which the ETC determined income-based eligibility where available; 5) date and documentation/data source used to determine income-based eligibility if no database was available to determine subscriber eligibility;⁵⁷ 6) date, database, and program on which ETC determined subscriber eligibility; 7) date and records detailing the documentation a subscriber provided to demonstrate Lifeline eligibility; 8) state Lifeline administrator documentation of customer eligibility, and subscriber's certification of eligibility; 9) date of customer service activation; 10) application/certification and annual re-certification forms for each subscriber associated with a date and time of signature; and 11) date of transmission of customer de-enrollment to database.

H. Annual Company Certifications

The Company will submit an annual certification to USAC, signed by a Company officer under penalty of perjury, that the Company: (1) has policies and procedures in place to review consumers' documentation of income- and program-based eligibility and ensure that its Lifeline subscribers are eligible to receive Lifeline services;⁵⁸ (2) is in compliance

⁵⁷ Such documentation includes the documentation listed in Section I.B. *supra*.

⁵⁸ See *Lifeline Reform Order*, ¶ 126; section 54.416(a)(1).

with all federal Lifeline certification procedures;⁵⁹ and (3) has obtained a valid certification form for each subscriber for whom the carrier seeks Lifeline reimbursement.⁶⁰

In addition, the Company will provide the results of its annual re-certifications/verifications on an annual basis to the Commission, USAC, the applicable state commission and the relevant Tribal governments (for subscribers residing on Tribal lands).⁶¹ Further, as discussed above, the Company will report annually to the Commission the number of subscribers de-enrolled for non-usage by month.⁶²

The Company will also annually report to the Commission, USAC, and relevant state commissions and the relevant authority in a U.S. territory or Tribal government as appropriate,⁶³ the company name, names of the company's holding company, operating companies and affiliates, and any branding (such as a "dba" or brand designation) as well as relevant universal service identifiers for each entity by Study Area Code.⁶⁴ The Company will report annually information regarding the terms and conditions of its Lifeline plans for voice telephony service offered specifically for low-income consumers during the previous year, including the number of minutes provided and whether there are additional charges to the consumer for service, including minutes of use and/or toll calls.⁶⁵ Finally, the Company will annually provide detailed information regarding service outages in the previous year, the number of complaints received and certification of compliance

⁵⁹ See *Lifeline Reform Order*, ¶ 127; section 54.416(a)(2).

⁶⁰ See section 54.416(a)(3).

⁶¹ See *Lifeline Reform Order*, ¶¶ 132, 148; section 54.416(b).

⁶² See *Lifeline Reform Order*, ¶ 257; section 54.405(e)(3).

⁶³ See section 54.422(c).

⁶⁴ See *Lifeline Reform Order*, ¶¶ 296, 390; section 54.422(a).

⁶⁵ See *Lifeline Reform Order*, ¶ 390; section 54.422(b)(5).

with applicable service quality standards and consumer protection rules, as well as a certification that the Company is able to function in emergency situations.⁶⁶

I. Cooperation with State and Federal Regulators

The Company has cooperated and will continue to cooperate with federal and state regulators to prevent waste, fraud and abuse. More specifically, the Company will:

- Make available state-specific subscriber data, including the names and addresses of Lifeline subscribers, to USAC and to each state public utilities commission where the Company operates for the purpose of determining whether an existing Lifeline subscriber receives Lifeline service from another carrier;⁶⁷
- Assist the Commission, USAC, state commissions, and other ETCs in resolving instances of duplicative enrollment by Lifeline subscribers, including by providing to USAC and/or any state commission, upon request, the necessary information to detect and resolve duplicative Lifeline claims;
- Promptly investigate any notification that it receives from the Commission, USAC, or a state commission to the effect that one of its customers already receives Lifeline services from another carrier; and
- Immediately de-enroll any subscriber whom the Company has a reasonable basis to believe⁶⁸ is receiving Lifeline-supported service from another ETC or is no longer eligible – whether or not such information is provided by the Commission, USAC, or a state commission.⁶⁹

II. Description of Lifeline Service Offerings⁷⁰

The Company will offer its Lifeline service in the states where it is designated as an ETC⁷¹ and throughout the coverage area of the Sprint Nextel and Verizon Wireless

⁶⁶ See *Lifeline Reform Order*, ¶ 389; section 54.422(b)(1)-(4).

⁶⁷ The Company anticipates that the need to provide such information will sunset following the implementation of the national duplicates database.

⁶⁸ See section 54.405(e)(1).

⁶⁹ See Cricket Compliance Plan at 10.

⁷⁰ See Compliance Plan Public Notice at 3.

footprints. Blue Jay purchases wireless minutes from an intermediary, Natel Networks, which purchases wholesale minutes from Sprint Nextel and Verizon Wireless. Blue Jay's Lifeline offering will provide all non-Tribal customers with the option to choose a plan with 250 anytime prepaid minutes per month at no charge. Tribal customers will all have with the option to choose an unlimited plan. 611 customer service and 911 emergency calls will all be free, regardless of service activation or availability of minutes, and will not count against the customer's airtime. All plans will include domestic long-distance at no extra per minute charge. Directory assistance calls (411) will be free, however, they will count as airtime minutes of usage. Lifeline customers can purchase additional bundles of minutes for as low as \$0.05/minute depending on the minute package purchased. For example, customers can purchase a 200 minute package for \$10.00. Airtime "top-up" minutes will be available for purchase at the Company's retail locations and on its website.

The Company will offer two basic Lifeline service packages throughout all of its service territories, except for Tribal areas where the Company will offer two plans that are only available to Tribal residents. The Company's basic Lifeline programs are listed below.

Lifeline Free Plan 125. Each month the customer will receive 125 free anytime voice minutes. Text messaging will be assessed at a rate of 1 minute per text message for sending and 1 minute per text message for receiving text messages. Unused minutes will rollover from month to month. This plan will be available in all states where the Company offers service except in Tribal areas.

⁷¹ The Company is not yet designated as an ETC in any states, but intends to file petitions shortly, including with respect to federal jurisdiction states.

Lifeline Free Plan 250. Each month the customer will receive 250 free anytime voice minutes. Text messaging will be assessed at a rate of 1 minute per text message for sending and 1 minute per text message for receiving text messages. There are no rollover minutes with this plan. Unused minutes will expire each month on the service expiration date. This plan will be available in all states where the Company offers service except in Tribal areas.

Tribal Resident Lifeline Unlimited Plan. Each month the customer will receive unlimited anytime voice minutes for \$5.00 per month plus fees and taxes. Text messaging will not be available with the unlimited talk plan. There are no rollover minutes with this plan as minutes are unlimited. This plan will only be available to Tribal residents.

Tribal Resident Lifeline 1000 Plan. Each month the customer will receive 1,000 anytime voice minutes or 1,000 text messages for \$1.00 per month plus fees and taxes. Text messaging will be assessed at a rate of 1 minute per text message for sending and 1 minute per text message for receiving text messages. There are no rollover minutes with this plan. Unused minutes will expire each month on the service expiration date. This plan will only be available to Tribal residents.

Additionally, customers can select either a free wireless handset or purchase an upgraded phone, such as a smartphone. For those customers choosing to upgrade to a smartphone, data can be added to any phone plan starting at \$1.25 per megabyte – a price that can be reduced on a “per megabyte” basis when the customer purchases multiple megabytes of data. The Company will also allow low-income customers to add affordable data usage to their free voice/text minutes thereby supporting greater smartphone utilization, consistent with the Commission’s goal of promoting broadband access to all

Americans. Additional information regarding the Company's plans, rates and services can be found on its website www.bluejaywireless.com.

III. Demonstration of Financial and Technical Capabilities and Certifications Required for ETC Designation⁷²

Financial and Technical Capabilities. Revised Commission rule 54.202(a)(4), 47 C.F.R. 54.202(a)(4), requires carriers petitioning for ETC designation to demonstrate financial and technical capability to comply with the Commission's Lifeline service requirements.⁷³ The Compliance Plan Public Notice requires that carriers' compliance plan include this demonstration. Among the factors the Commission will consider are: a carrier's prior offering of service to non-Lifeline subscribers, the length of time the carrier has been in business, whether the carrier relies exclusively on Lifeline reimbursement to operate, whether the carrier receives revenues from other sources and whether the carrier has been the subject of an enforcement action or ETC revocation proceeding in any state.

Through its affiliates, Blue Jay has provided marketing services including to low-income customers since 2004. One of the Company's affiliates, Splash Media, LP, is among the largest providers of full-service social media marketing services in the world. Another affiliate, Link Distributors, LLC, is a leading distributor of wireless handsets and Lifeline enrollment for ETCs. Both businesses have substantial revenues with a long-term profitability, are in good standing with all of their vendors and have been providing customers with services for a combined nine years. As a core part of its marketing strategy, Blue Jay will be actively marketing to non-Lifeline customers targeting the prepaid, credit challenged and underbanked sector, and, consequently, will not be relying

⁷² See Compliance Plan Public Notice at 3.

⁷³ See *Lifeline Reform Order*, ¶¶ 387-388 (revising Commission rule 54.202(a)(4)).

exclusively on Lifeline reimbursement for the Company's operating revenues. Blue Jay also has access to other financial resources including substantial cash reserves from its owners. The Company has not been subject to enforcement sanctions or ETC revocation proceedings in any state.

Service Requirements Applicable to Company's Support. The Compliance Plan Public Notice requires carriers to include "certifications required under newly amended section 54.202 of the Commission's rules."⁷⁴ The Company certifies that it will comply with the service requirements applicable to the support the Company receives.⁷⁵ The Company will provide all of the telecommunications service supported by the Lifeline program and will make the services available to all qualified consumers throughout the states in which it is designated as an ETC. The Company's services will include voice telephony services that provide voice grade access to the public switched network or its functional equivalent. Further, the Company's service offerings will provide its customers with a set number of minutes of use for local service at no charge to the customer. The Company's proposed Lifeline offerings include packages in Section II *supra* that can be used for local and domestic toll service.

The Company also will provide access to emergency services provided by local government or public safety officials, including 911 and E911 where available and will comply with any Commission requirements regarding E911-compatible handsets. As discussed above, the Company will comply with the Commission's forbearance grant conditions relating to the provision of 911 and E911 services and handsets.

⁷⁴ Compliance Plan Public Notice at 3.

⁷⁵ 47 C.F.R. § 54.202(a)(1).

Finally, the Company will not provide toll limitation service (“TLS”). Blue Jay, like most wireless carriers, does not differentiate domestic long distance toll usage from local usage and all usage is paid for in advance. Pursuant to the *Lifeline Reform Order*, subscribers to such services are not considered to have voluntarily elected to receive TLS.⁷⁶

IV. Conclusion

Blue Jay submits that its Compliance Plan fully satisfies the conditions set forth in the Commission’s *Lifeline Reform Order*, the Compliance Plan Public Notice and the Lifeline rules. Accordingly, the Company respectfully requests that the Commission expeditiously approve its Compliance Plan.

Respectfully submitted,



John J. Heitmann
Joshua T. Guyan
Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8544

Counsel to Blue Jay Wireless, LLC

May 11, 2012

⁷⁶ See *Lifeline Reform Order*, ¶ 230.

EXHIBIT A



Blue Jay Wireless, LLC
[State] Wireless Lifeline Service Application and Certification

Mail or fax form completed and signed form to:
5010 Addison Circle Addison, TX 75001
Fax XXX-XXX-XXXX / Customer Service: X-XXX-XXX-XXXX

A complete and signed Lifeline Service Application and Certification ("Certification") is required to enroll you in Blue Jay Wireless, LLC's ("the Company's") Lifeline service program in your state. This Certification is only for the purpose of verifying your eligibility for Lifeline service and will not be used for any other purpose. Service requests will not be processed until this Form has been received and verified by Company.

One Lifeline service per household disclosures: Lifeline is a government assistance program and willfully making false statements to obtain a Lifeline benefit can result in fines, imprisonment, de-enrollment or being barred from the program. Lifeline benefits are limited to a single line of service per household. A household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses. A household may not receive multiple Lifeline discounts. You may apply your Lifeline discount to either one landline or one wireless number, but you cannot have the discount on both and you cannot receive Lifeline benefits from multiple providers. Note that not all Lifeline services are currently marketed under the name Lifeline. Lifeline is a non-transferable benefit and you may not transfer your benefit to any other person, including another eligible low-income consumer. Violation of the one-per-household limitation constitutes a violation of the Federal Communications Commission's rules and will result in your de-enrollment from the program, and potentially prosecution by the United States Government.

☐ I hereby certify that I have read and understood the disclosures listed above and that, to the best of my knowledge, my household is not already receiving a Lifeline service benefit.

Customer eligibility certification: I hereby certify that I participate in at least one of the following programs (**check one**):

- | | |
|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| <input type="checkbox"/> Supplemental Nutrition Assistance Program (SNAP) | <input type="checkbox"/> Income at or below 135% of Federal Poverty Guidelines |
| <input type="checkbox"/> Section 8 Federal Public Housing Assistance (FPHA) | <input type="checkbox"/> Food Distribution Program on Indian Reservations (FDPIR) |
| <input type="checkbox"/> Medicaid (not Medicare) | <input type="checkbox"/> Bureau of Indian Affairs General Assistance (BIA) |
| <input type="checkbox"/> Supplemental Security Income (SSI) | <input type="checkbox"/> Tribally Administered TANF (TATNF) |
| <input type="checkbox"/> Temporary Assistance for Needy Families (TANF) | <input type="checkbox"/> Head Start (meeting income qualifying standards) |
| <input type="checkbox"/> Low Income Home Energy Assistance Program (LIHEAP) | (Tribal) |
| <input type="checkbox"/> National School Lunch Program's free lunch program | |

Tribal eligibility:

☐ I hereby certify that I reside on Federally-recognized Tribal lands.

Customer Application Information:

First Name: _____ Middle Name: _____ Last Name: _____
Date of Birth: Month: ____ Day: ____ Year: ____ Last Four Digits of Social Security Number (or Tribal ID Number): _____
If Qualifying for Lifeline by Income, number of Individuals in Household: _____
Home Telephone Number (if available): _____

Residential Address (P.O. Box NOT sufficient)

Number: _____ Apt: _____ Street _____ City _____
State: _____ Zip Code: _____
Address is (choose one): ☐ Permanent ☐ Temporary

Billing Address (if different from Residential Address) (P.O. Box IS sufficient)

Number: _____ Apt: _____ Street _____ City _____
State: _____ Zip Code: _____

Multiple households sharing and address:

☐ I hereby certify that I reside at an address occupied by multiple households, including adults who do not contribute income to my household and/or share in my household's expenses, and I will complete a separate additional form.

Activation and usage requirement disclosures: This service is a prepaid service and you must personally activate it by calling [insert IVR call-in number]. To keep your account active, you must use your Lifeline service at least once during any 60 day period by completing an outbound call, purchasing additional minutes from Company, answering an in-bound call from someone other than Company, or by responding to a direct contact from Company confirming that you want to continue receiving Lifeline service from Company. If your service goes unused for 60 days, you will no longer be eligible for Lifeline benefits and your service will be suspended (allowing only 611 and 911 calls and calls to the Company's customer care center) subject to a 30 day cure period during which you may use the service (as described above) or contact the Company to confirm that you want to continue receiving Lifeline service from Company.

☐ I hereby certify that I have read and understood the disclosures listed above regarding activation and usage requirements.

Authorizations:

☐ I hereby authorize the Company to access any records required to verify my statements on this form and to confirm my eligibility for the Lifeline program. I also authorize the Company to release any records required for the administration of the Lifeline program (e.g., name, telephone number and address), including to the Universal Service Administrative Company, to be used in a Lifeline database and to ensure the proper administration of the Lifeline Program. Failure to consent will result in denial of service.

Additional certifications: I hereby certify, under penalty of perjury, that (check each box):

- ☐ I meet the income-based or program-based eligibility criteria for receiving Lifeline service and have provided documentation of eligibility if required
- ☐ I will notify the Company within 30 days if for any reason I no longer satisfy the criteria for receiving Lifeline including, as relevant, if I no longer meet the income-based or program-based eligibility criteria, I begin receiving more than one Lifeline benefit, or another member of my household is receiving a Lifeline benefit. I understand that I may be subject to penalties if I fail to follow this requirement
- ☐ I am not listed as a dependent on another person's tax return (unless over the age of 60)
- ☐ The address listed below is my primary residence, not a second home or business
- ☐ If I move to a new address, I will provide that new address to the Company within 30 days
- ☐ If I provided a temporary residential address to the Company, I will verify my temporary residential address every 90 days
- ☐ I acknowledge that providing false or fraudulent information to receive Lifeline benefits is punishable by law
- ☐ I acknowledge that I may be required to re-certify my continued eligibility for Lifeline at any time, and my failure to re-certify as to my continued eligibility within 30 days will result in de-enrollment and the termination of my Lifeline benefits
- ☐ The information contained in this certification form is true and correct to the best of my knowledge

Applicant's Signature: _____ **Date:** _____

For Agent Use Only (check the appropriate boxes for the proof of eligibility viewed; do not copy or retain documentation):

Documents Acceptable Proof for Income-Eligibility (check 1):

- ☐ The prior year's state, federal, or Tribal tax return,
- ☐ Current income statement from an employer or paycheck stub,
- ☐ A Social Security statement of benefits,
- ☐ A Veterans Administration statement of benefits,
- ☐ A retirement/pension statement of benefits,
- ☐ An Unemployment/Workmen's Compensation statement of benefits,
- ☐ Federal or Tribal notice letter of participation in General Assistance, or
- ☐ A divorce decree, child support award, or other official document containing income information for at least three months time.

- ☐ Section 8 Federal Public Housing Assistance (FPHA)
- ☐ Supplemental Security Income (SSI)
- ☐ Temporary Assistance for Needy Families (TANF)
- ☐ Low Income Home Energy Assistance Program (LIHEAP)
- ☐ National School Lunch Program's free lunch program
- ☐ Food Distribution Program on Indian Reservations (FDPIR)
- ☐ Bureau of Indian Affairs General Assistance (BIA)
- ☐ Tribally Administered TANF (TATNF)
- ☐ Head Start (meeting income qualifying standards)
- ☐ State Program 1
- ☐ State Program 2

Documents Acceptable Proof for Program-Eligibility (choose 1 from each list A and B below):

List A - Choose 1

- ☐ Supplemental Nutrition Assistance Program (SNAP)
- ☐ Medicaid

List B - Choose 1:

- ☐ Program participation card/document
- ☐ Prior year's statement of benefits
- ☐ Notice letter of participation
- ☐ Other official document evidencing participation

Applicant Account Number	Agent/Dealer Number

EXHIBIT B

250 FREE

Minutes Every Month!

500 & 1000 Minute Plans Also Available



**Must
qualify to
be eligible.**

- This is a Lifeline service provided by Blue Jay Wireless, LLC, which is an eligible telecommunications carrier.
- Lifeline is a government assistance program.
- Service is non-transferable.
- Only one Lifeline discount may be received per household.
- Only eligible consumers may enroll in the program.
- Consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program.
- Customers must present proper documentation confirming eligibility for the Lifeline program through participation in Federal Public Housing Assistance, Food Stamps, Low-Income Home Energy Assistance Program (LIHEAP), Income below 135% of the Federal Poverty Guidelines, Medicaid, National School Lunch's Free Lunch Program, Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF). Program Based Eligibility criteria varies by state. Proof of eligibility includes an eligible program card or statement of benefits.

www.BlueJayWireless.com